

THE ONTARIO HUMAN RIGHTS CODE, S.O. 1961-62, c. 93,
as amended

IN THE MATTER OF the complaint made by Mr. Edward St. Hill
against Mr. and Mrs. Ivan Grishin alleging that they
committed a breach of section 3 of the Ontario Human Rights
Code by denying him occupancy of a two room flat.

BOARD OF INQUIRY

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PROF. W. S. TARNOPOLSKY

Submitted: July 28, 1970.

IN THE MATTER OF the Ontario Human Rights Code, S.O.
1961-62, c. 93, as amended by S.O. 1965, c. 85, S.O. 1967,
c. 66, S.O. 1968, c. 85, and S.O. 1968-69, c.00;

- AND -

IN THE MATTER OF the complaint made by Mr. Edward St. Hill
against Mr. and Mrs. Ivan Grishin alleging that they committed
a breach of section 3 of the said Act by denying him occupancy
of a two room flat;

- AND -

IN THE MATTER OF a Board of Inquiry appointed under section
13 of the Ontario Human Rights Code, to conduct a hearing to
inquire into this complaint.

BOARD OF INQUIRY

- PROF. W. S. TARNOPOLSKY

APPEARANCES:

Mr. R. Scott - Counsel for the Commission
Mr. B. A. Kelsey - Counsel for the Respondents

TO THE ONTARIO HUMAN RIGHTS COMMISSION and to the Honourable
Dalton Bales, Minister of Labour of the Province of Ontario:

GENTLEMEN:

On the eighteenth day of December, A.D., 1969, I was
appointed a Board of Inquiry to inquire into the above-mentioned

complaint and to report in accordance with section 13 of the Ontario Human Rights Code.

Arrangements were made by the Ontario Human Rights Commission for the hearings to be held in the McDonald Block, Parliament Buildings, Bay and Wellesley, Toronto, on May 26th, 1970. The inquiry was not completed on that date, and had to be resumed on June 22nd, when the hearings were concluded.

* * * * *

On the basis of both written and oral testimony submitted to me, I find the pertinent facts to be as follows: -

On May 7th, 8th, 9th, and 10th, 1969, the following advertisement appeared in the Toronto Daily Star under the heading Rooms to Let Furnished:

COLLEGE-Havelock (27) front room & big kitchen,
1 - 2 adults. 533-1995.

On Thursday, May 8th, 1969, the Complainant, Mr. Edward St. Hill, saw the advertisement at about 1:30 p.m. in the afternoon and called the telephone number listed. The person who answered the telephone sounded to him like an adult male with an accent indicating that he was not born and raised in Canada. The price of the accommodation was ascertained at \$20 per week. When the Complainant asked about any restrictions or regulations, the answer received seemed to be indefinite but left Mr. St. Hill with the impression that the individual did not quite understand the question, except that the rooms were still available.

After ascertaining the location and getting directions, Mr. St. Hill got into his car and drove to the address. His

estimate was that it took him ten to twelve minutes to get there. When he knocked at the door a man came, opened it, said something which the Complainant did not quite understand and, in the Complainant's words, "he slammed the door". Mr. St. Hill knocked a second time, it was opened again by the man identified by Mr. St. Hill as the male Respondent. Mr. St. Hill tried to ask about the accommodation, but the man interrupted and said, "it is gone". He slammed the door a second time, and nothing more exchanged between the Complainant and the male Respondent.

Mr. St. Hill got into his car and drove a few blocks away to a barber shop to get a haircut. He told Mr. Legendre, about what had happened and asked him to telephone the number to see if the place was vacant. The barber proceeded to call the number in the advertisement and was told that the rooms were still vacant. In the light of these events Mr. St. Hill contacted the Ontario Human Rights Commission, was asked to come in and lay a complaint, and he did so.

I should perhaps state at this time that there is no question but that the person who answered the telephone at 27 Havelock Street on both occasions, i.e., when first called by Mr. St. Hill, and when subsequently called by the barber, was the male Respondent, Mr. Grishin. I come to this conclusion in view of the fact that the time lapse between the initial call by Mr. St. Hill and his appearance at the door was extremely brief, the voices which he heard were in his opinion the same, and he did identify the man who answered the door on the second knock as the male Respondent. The barber testified that he had actually asked on the telephone to speak to the landlord or landlady and was told that he was



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speaking to the landlord. There was no evidence presented on behalf of the Respondents that someone else in fact answered the telephone. Therefore, the man who was in contact by telephone or in person with both Mr. St. Hill and the barber was the male Respondent, Mr. Grishin.

The complaint of Mr. St. Hill was received by Mr. Brett Mann, a Human Rights Officer. That evening Mr. Mann went personally to the house at 27 Havelock Street about 9:30 or 10:00 o'clock in the evening. The young woman who identified herself as Mr. Grishin's daughter informed him that Mr. Grishin was not in, but that he did have rooms to rent. She stated that Mr. Grishin was working that night, but that Mr. Mann could come around the next day if he wanted to see him.

When Mr. Paul Dobson, another Human Rights Officer, came to interview the Respondents on May 14th, the fact of the refusal of accommodation to Mr. St. Hill was not denied. Instead, Mr. Dobson was told by Mr. Grishin that shortly before Mr. St. Hill had arrived another couple had taken the accommodation by making a deposit by cash in the amount of twenty dollars. Apparently, however, no receipt was given, nor did the couple leave their name, address, or telephone number. Apparently, also, they never did come back, up to and including May 14th.

The interview conducted by Mr. Dobson with the Respondents and their daughter became rather heated and Mr. Dobson suggested that Mr. Grishin should speak with the Assistant Director, Mr. Herbert Sohn, by telephone. Mr. Dobson used the Respondents' telephone to arrange for this. As a result of the telephone conversation Mr. Grishin was sufficiently reassured so that

he took Mr. Dobson around the second floor and showed him the accommodation in question. Mr. Dobson was informed that the accommodation consisted of the front room over the front door facing Havelock Street, as well as the sole use of the kitchen and the porch leading from the kitchen to the back of the house.

On the following day, May 15th, a meeting was held in the office of the Assistant Director at the Commission offices at 74 Victoria Street in Toronto. Present were Mr. Sohn conducting the meeting, Mr. and Mrs. Grishin, and Mr. Dobson. Mr. Sohn reviewed the evidence as it had been presented to him. The interview would appear to have been a rather difficult one, with some considerable objection by the Respondents to being "treated like criminals". At the conclusion of the meeting Mr. and Mrs. Grishin signed the following undertaking:

(Exhibit #2)

May 15, 1969.

Dr. Louis Fine,
Chairman,
Ontario Human Rights Commission,
74 Victoria Street,
Toronto 210, Ontario.

Dear Mr. Fine:

This is to advise you that we did not intend to deny accommodations to Mr. Edward St. Hill because of his race or colour in our building at 27 Havelock Street in Toronto.

When Mr. St. Hill visited our building on May 8th to inspect the accommodation which we had advertised in the Toronto Daily Star we had already received a twenty dollar (\$20.00) deposit for the rental of this accommodation. The gentleman who submitted the deposit, which is equivalent to one week's rent, did not leave his name, address or phone number and I gave him no receipt. His visit took place sometime before noon on Thursday, May 8th, 1969. I have had no further word from him.

It is our policy to treat all people fairly without regard to race, creed or nationality. We regret anything that we may have said or done that has led Mr. St. Hill to feel that we intended to discriminate against him.

We now find that we require all of our rooms for our family and consequently will not be renting accommodations. Should our plans change we will notify the Commission prior to making any arrangements for the rental of dwelling accommodations.

We trust that the above assurances and undertakings will be acceptable to you and the Ontario Human Rights Commission.

Yours truly,

Witnessed by
"Herbert Sohn"

"Maria Grishin"
Maria Grishin

"Ivan Grishin"
Ivan Grishin

The next pertinent event took place on July 8th, following, when Mr. Dobson passed the house on 27 Havelock Street and saw a sign on the front door: "Room - Kitchen". Mr. Dobson knocked on the door, and Mr. Grishin answered. Mr. Dobson brought Mr. Grishin's attention to the letter which he and his wife had signed, and reminded Mr. Grishin that he had agreed to inform the Commission if a vacancy should occur. Mr. Grishin claimed that he had forgotten to do so, but that if Mr. Sohn (apparently Mr. Grishin called him Mr. Herb) could "send any black person to the place and he would rent it to them, but it would have to be a female".

Following consultation with the Assistant Director, a decision was made to prepare a new complaint. Mr. St. Hill was informed about the advertisement with respect to the availability of accommodation at the place at 27 Havelock Street and invited to come into the Commission offices to sign the complaint. There is no question but that it was officers of the Commission and not the complainant, who became aware of the availability of accommodation at 27 Havelock Street in July, and no doubt but that the initiative for signing the second complaint came from the Commission.

* * * * *

The alleged discrimination which is the subject of this inquiry would, if proved, constitute a breach of Section 3 of the Ontario Human Rights Code. This section reads as follows: -

3. No person, directly, or indirectly, alone or with another, by himself or by the interposition of another, shall,

(a) deny to any person or class of persons occupancy of any commercial unit or any self-contained dwelling unit; or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any self-contained dwelling unit,

because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons.

The task facing a Board of Inquiry investigating an allegation that a breach of Section 3 of the Ontario Human Rights Code has been committed is to determine two questions: (1) was the Complainant refused accommodation by the Respondent(s) for reasons forbidden by Section 3? (2) was the accommodation "a self-contained dwelling unit"?

In this particular inquiry I am faced with two additional questions arising out of objections raised by Mr. Kelsey early in the hearings:

(1) Is Mrs. Grishin validly a Respondent even though she was not the one in conversation with Mr. St. Hill on the first occasion, nor with Mr. Dobson on the second occasion, and was not named in the Complaint of May 9th (Exhibit #1)?

(2) Can the second complaint dated July 11th (Exhibit #3) be dealt with as a "complaint" under Sections 12 and 13 of the Ontario Human Rights Code?

For the purposes of this report I would deal first with the two questions arising out of Mr. Kelsey's objections because they have specific relevance to this particular inquiry. I will then turn to the two questions which are usually to be determined when a board of inquiry is faced with a complaint under Section 3 of the Ontario Human Rights Code.

I would like to deal first with the question of Mrs. Grishin's involvement as this is the issue which can be dealt with most briefly. According to a certified copy of the document deposited at the Toronto Registry Office as No. 124935 W.B., the property on 27 Havelock Street is owned jointly by "Ivan Griszin" and his wife, "Maria Griszin". Although the spelling of the surnames on the deed are slightly different from the spelling of the surnames of the Respondents, I can take notice of the fact that it is common for the "sh" sound of an east European surname to be spelled as "sz". There is no question but that Mrs. Grishin is a joint-owner of the property with Mr. Grishin.

Secondly, she apparently signed voluntarily the letter or agreement of May 15th (Exhibit #2) referred to above.

Third, at no time was there an allegation on her part that Mr. Grishin acted in these events in a manner contrary to her wishes as a joint owner. The discrimination prohibited by Section 3 of the Ontario Human Rights Code, in its opening paragraph specifically contemplates a person acting "directly or indirectly, alone or with another, by himself or by the interposition of another"

There is no question, then, but that Mrs. Grishin was properly joined as a Respondent in this inquiry. Although she was not named in the first complaint, at all times pertinent to the holding of this inquiry she was informed that she was a Respondent (see Exhibits #4, 5, and 16), and was given notice that she was a party to the matter complained of within the terms of Section 13.

The question regarding the second complaint of July 11th has to be dealt with at some greater length. On the facts of this case, it is quite clear that Mr. St. Hill was not aware of the availability of the accommodation at 27 Havelock Street in July, 1969. Furthermore, he admitted that he was not looking for accommodation at that time. The agreement of May 15th (Exhibit #2) did not require the Respondents to give first option to Mr. St. Hill.

There is no question but that the second complaint was signed by Mr. St. Hill on the inspiration of Commission officers. It is difficult to say that in this particular inquiry the complaint of July 11th was "the complaint of any person that he has been discriminated against contrary to this Act".

On the other hand, it must be recognized that the Ontario Human Rights Code throughout, and particularly in Sections 8 (b), 12 (1), and 13 (1) charges the Commission with the duty of endeavouring to settle complaints. If the Commission were unable to enforce settlements entered into by respondents to settle such complaints, the work of the Commission would be seriously hampered.

It is tempting to answer the question posed about the status of the complaint of July 11th, i.e., whether or not a complaint alleging a breach of settlement entered into can be considered a complaint under the Ontario Human Rights Code. Mr. Kelsey asked for a ruling. However, after long and careful consideration, I have decided that I must confine myself to providing only those answers which are specifically required by the disposition of this inquiry. Without making a full determination, more properly than I am able to do in this inquiry, I do not want to provide a decision which would preclude a different Board of Inquiry, in different circumstances and faced with a different agreement or undertaking, from coming to a different conclusion.

For the purposes of this inquiry let me merely state that the undertaking entered into on May 15th (Exhibit #2), and the alleged violation of it in July, 1969, have relevance only in the light of the events which gave rise to the first complaint. In other words, the alleged breach of the undertaking may be a factor in determining the bona fides of the Respondents with respect to the events in May, 1969, and it may be a factor in determining the form of undertakings I should recommend should I find the complaint to be substantiated. However, on the facts of this inquiry, and in the light of the wording of the document of May 15th, the relevance of the events referred to in the second complaint is determined by the validity of the first complaint. In other words, if the first complaint falls, the second complaint must fall with it. If the May complaint is substantiated, the related events in July can be a factor in determining the disposition of this complaint, but are not of themselves a breach of Section 3 of the Code.

* * * * *

In order to conclude that a breach of Section 3 of the Ontario Human Rights Code has occurred, it is necessary to answer the following three questions in the affirmative: -

- (1) Was the Complainant refused accommodation by the Respondents?
- (2) Was this refusal based upon discriminatory reasons which are forbidden by Section 3 of the Ontario Human Rights Code?
- (3) Was the accommodation in question "a self-contained dwelling unit"?

One of the difficult questions faced by a Board of Inquiry is which of these questions to deal with first. Unless the accommodation can be described as "a self-contained dwelling unit", then surely there is no jurisdiction under the Ontario Human Rights Code to deal further with the complaint. On the other hand, unless some determination is made that there has been refusal of accommodation for reasons forbidden by Section 3, then surely there could be objection to a Board of Inquiry investigating the premises to see whether they can be described as "a self-contained dwelling unit".

There seems to me to be no doubt but that once a conclusion is reached by the Ontario Human Rights Commission that there is a sufficient prima facie case of discrimination within the terms of Section 3 to warrant recommending the establishment of a Board of Inquiry, then by Section 13 (3), the Board "shall give the parties full opportunity to present evidence and to make submissions" with respect to these three questions.

Thus, which of the three questions must be determined first may vary from inquiry to inquiry. I do not believe that

the pattern must necessarily be the same in each inquiry. In one, it might be more appropriate to deal first with the question of whether or not there was a denial of accommodation for reasons forbidden by the Code. On another occasion, after being satisfied that there is a prima facie case of discrimination, a Board of Inquiry may conclude that it is necessary to deal first with the question of the type of accommodation.

In this particular case, I have already dealt with the first of the three questions in my opening summary of facts and have concluded that the Complainant was refused accommodation by the Respondents.

I have so concluded despite Mr. Grishin's testimony that he never saw Mr. St. Hill until this hearing.

I believe that Mr. Grishin was mistaken in not recalling Mr. St. Hill. According to Mr. Grishin's own testimony, he had never had coloured tenants before 1969. In addition, there were not many coloured people in the district. Then suddenly, during the months of May and July, 1969, a number of prospective coloured tenants appeared at his door. In the circumstances, and in the light of the evidence which I have summarized on pages three and four of this report, I believe that Mr. St. Hill was one of the two young black men who Mr. Grishin claims he took to be students.

[Because of this conflict of testimony, and in fairness to subsequent Respondents, I would urge that complainants and respondents be brought together at an earlier stage in the investigation and conciliation phase than was the case here. This confrontation should occur at some time prior to a Board hearing. Or, at the very least, the Commission officers should establish that the respondents know who the complainant is.]

To repeat, then, I believe that Mr. St. Hill was refused accommodation by Mr. Grishin. For reasons which I outlined earlier in this report, I believe that this act, within the terms of the opening paragraph of Section 3 of the Code, binds Mrs. Grishin as well.

With respect to the second question -- was this refusal motivated by the discriminatory factors referred to in Section 3? -- I will go no further at this point than to state that I believe at least a prima facie case was made out. At the hearing, Mr. Grishin emphasized on a number of occasions the fact that in May he was looking either for a girl or a married couple. However, he did not ask either Mr. St. Hill nor Mr. Legendre on the telephone if either was married. He did not ask Mr. St. Hill at the door whether he was married. Surely, if he had in mind either a girl or a married couple this was the first thing he would have raised on the telephone when hearing a male voice.

In the undertaking signed on May 15th (Exhibit #2), no mention was made that the reasons for denying Mr. St. Hill the accommodation was the fact that the Grishins' wanted a girl or a married couple. In fact, the reason given was that someone else -- and may I emphasize that the reference is not to a couple but to a "gentleman" -- left a twenty dollar deposit for one week's rental. At the hearing Mr. Grishin admitted that this paragraph in the undertaking was untrue.

When it comes to the events of July, Mr. Grishin did not testify that he failed to notify the Commission in accordance with the undertakings of May 15th because he forgot. Instead, the reason given by him is that he presumed that the decision by Mr. Justice Stewart in Regina v. Tarnopolsky, Ex parte Bell

(1969) 6 D.L.R. (3d) 576, relieved him of any responsibility to the Commission. I do not want to go into the questions of the legal propriety or impropriety of acting in this way, except to say that an agreement signed in order to avoid further involvement with the Commission deserves some observance if one wants to argue the good motives of the Respondent. Moreover, this evidence belies Mr. Grishin's statement to Mr. Dobson in July that he had failed to contact the Commission because he had forgotten to do so.

On the other hand, on Mr. Grishin's behalf, it must be stated that the accommodation which was available in May was not in fact rented to anyone else. The evidence would seem to indicate that apart from one tenant who had lived with the Grishins for some ten years, and who was apparently a war amputee, the accommodation was not rented to a single man. It is possible that when Mr. Grishin saw Mr. St. Hill, and Mr. St. Hill does have a young looking face, he may have concluded that he was single. It is true that half of the accommodation which was offered in the May advertisement, i.e., "front room" was, as set out in the undertaking of May 15th, used by members of Mr. Grishin's family, and it is still so occupied.

Finally, there is the evidence that from July until November, 1969, the kitchen (which was up for rent on both occasions) and the sunporch-cum-bedroom, were leased to Miss Monica Shallow who described herself at the hearing as "a negro". I should at this point state that although there was some attempt to question the validity of Miss Shallow's testimony, I have concluded that she was truthful at the hearing.

It is possible, of course, that the fact of her tenancy is consistent with a denial to Mr. St. Hill for reasons contrary to Section 3 of the Ontario Human Rights Code. It is possible

that the Respondents had a change of heart in the summer of 1969. However, the fact of Miss Shallow's tenancy is certainly a strong corroboration of Mr. Grishin's assertions that he wanted either a female tenant or a married couple in May, and a female tenant only, in July. This is all the more believable in the light of the juxtaposition of the accommodation for rent, with the rooms occupied by the Respondents' daughter in May, and their son and daughter in July.

* * * * *

This fact brings me to the issue which I feel is crucial to this inquiry, and that is -- is the accommodation in question here "a self-contained dwelling unit"?

It has repeatedly been stated by Boards of Inquiry under the Ontario Human Rights Code, as well as by English Courts dealing with similar phraseology in different statutes, that the determination in each case must depend upon the facts peculiar to that particular case. I am not prepared to say that if one listed characteristics a, b, c, d, e, and f as describing certain accommodation, that it is characteristic e, or c, or f, which is crucial in determining whether this accommodation is or is not "a self-contained dwelling unit". No one factor or characteristic may be sufficient of itself. A number of factors, varying from one case to another, may provide a total picture.

On the whole, as has been stated previously in the Reports of Boards of Inquiry into the Complaint of Miss Monica Mitchell, and the Complaint of Miss Eluada Duncan,^{that} the existence of shared bathrooms is not in itself a crucial factor one way or the other. Similarly, entry through the front door of the home and up a staircase to a second or third floor is not

in itself sufficient to determine that a certain grouping of rooms is not self-contained. The fact that doors are locked or unlocked could be an important factor to consider, but is not of itself a crucial one.

In this particular case, I must emphasize that the accommodation which I must consider is the accommodation which was made available in May, 1969. Attached hereto and marked as Appendix A is a copy of the sketch of the second floor of 27 Havelock Street which was drawn by Mr. Dobson and marked by me as Exhibit #13. According to this diagram, the accommodation I am concerned with is at the bottom of the diagram, described as "(Front) Vacant Room Involved in complaint", and that room which is near the top of the diagram, and which has been described as "Kitchen (used only by occupant of front room)".

It will be noted that according to the diagram the stairway from the first or ground floor to the second floor comes out onto the second floor somewhere between the kitchen and the room marked as "Miss Grishin's bedroom". It should be noted, therefore, that the tenant occupying the premises advertised in May, 1969, would have to pass by Mr. Grishin's bedroom when coming up the stairs to go into the front room; in going from the front room to the kitchen; in going from the kitchen to the Bathroom, or to the front room.

The premises which were to be leased were not grouped in one area, but in fact spanned the room which was to be occupied by Miss Grishin. Furthermore, it should be noted that the descriptions we have received of the first or ground floor, and a sketch of this was provided by Mr. Dobson, indicate that the stairway to the second floor was not close to the front door, was not isolated from the rest of the living premises

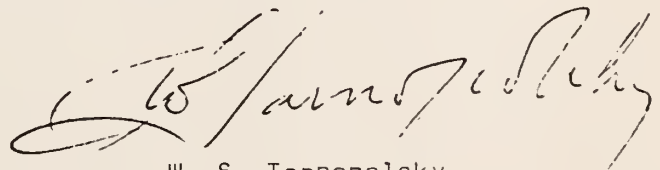
on the first floor, but in fact required one to go part way into the house around the front or sitting room, and past the door to that front room. In fact, the front door was near the north wall while the stairway to the second floor was along the south wall. Therefore, although the evidence given by Miss Shallow was that she was not invited into the premises occupied by Mr. and Mrs. Grishin, it nevertheless was necessary for any tenant to go some considerable way through the living premises of the Respondents in order to gain access to the second floor.

It should be noted that the evidence was that the rooms on the second floor were not locked.

Again, may I emphasize that in my opinion, not one of the factors which I have described above is sufficient of itself to detract from the description "a self-contained dwelling unit". However, taken all together, I think they indicate that it was not. In the light of this finding, I find that a breach of Section 3 of the Ontario Human Rights Code was not committed by the Respondents on May 8th, 1969, because the accommodation advertised was not "a self-contained dwelling unit".


Therefore, my recommendation is that this complaint should not be dealt with any further.

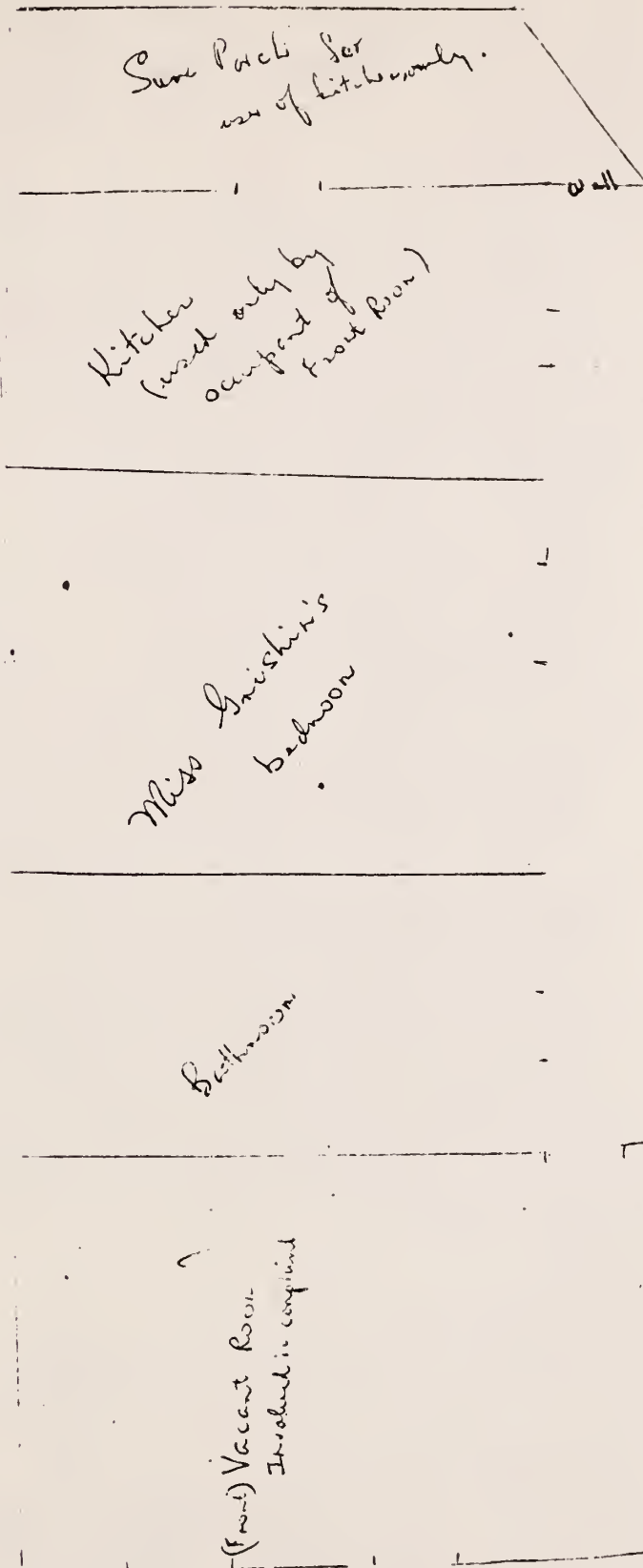
ALL OF WHICH IS RESPECTFULLY SUBMITTED.

A handwritten signature in dark ink, appearing to read "W. S. Tarnopolsky", written in a cursive style.

W. S. Tarnopolsky.

APPENDIX A

26 May 1966
Encl. #1




STAIRS to first floor
which is occupied
by his family (the wife &
daughter & son)

Top of 27 Havelock Street, Toronto (2nd floor only)

← HAVELOCK STREET →

